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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,728	04/14/2004	John T. Forbis	T4890.B.CON.DIV3	6694
20449	7590	11/23/2004	EXAMINER	
KARL R CANNON PO BOX 1909 SANDY, UT 84091			COTTINGHAM, JOHN R	
			ART UNIT	PAPER NUMBER
			2116	
DATE MAILED: 11/23/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/824,728

Applicant(s)

FORBIS, JOHN T.

Examiner

John R. Cottingham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 43-51 and 58-78 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 78 is/are allowed.
- 6) ☒ Claim(s) 43-51 and 58-77 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/14/04</u> . | 6) <input type="checkbox"/> Other: ____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 43-51 and 68-77 are rejected under 35 U.S.C. 102(b) as being anticipated by Russell U.S. Patent 5,547,169. Russell shows all of the claimed subject matter of a bracket in figures 1-4c.

Regarding claim 43, a bracket 40 for attaching a fence rail to a support structure, said fence rail having a retention clip disposed on an end thereof, said bracket comprising: a back wall 50 having a front face and a rear face; a rail support 74 extending from said front face of said back wall for receiving said fence rail; and a catch 58 disposed on said rear face of said back wall for engaging with said retention clip; wherein said bracket 40 is configured to be attached to said support structure such that engagement of said retention clip with said catch attaches said fence rail to said support structure.

Regarding claim 44, wherein said bracket further comprises means 50 for attaching said bracket to said support structure.

Regarding claim 45, wherein said means 50 for attaching said bracket to said support structure comprises at least one opening for receiving a fastener.

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Regarding claim 46, wherein said back wall further comprises at least one edge 60 projecting from said rear face surrounding said at least one opening.

Regarding claim 47, wherein said rail support comprises a bottom wall.

Regarding claim 48, wherein said bottom wall comprises a mouth 84 for receiving a vertical fence member.

Regarding claim 49, wherein said rail support further comprises a first side wall and a second side wall to form a substantial "U" shape with said bottom wall.

Regarding claim 50, wherein said first side wall and said second side wall each comprise a groove 84 for receiving a ridge to attach a cap to said bracket.

Regarding claim 51, wherein said back wall comprises a recessed area (curved area) surrounding said catch to form a space for receiving said retention clip.

Regarding claim 68, a bracket 40 for attaching a fence rail to a support structure, said fence rail having a retention clip disposed on an end thereof, said bracket comprising: a back wall having a front face and a rear face; a bottom wall 78 extending from said front face of said back wall for supporting said fence rail; and a catch 58 disposed on said back wall for engaging with said retention clip; wherein said bracket 40 is configured to be attached to said support structure such that engagement of said retention clip with said catch attaches said fence rail to said support structure.

Regarding claim 69, wherein said bracket further comprises means 50 for attaching said bracket to said support structure.

Regarding claim 70, wherein said means 50 for attaching said bracket to said support structure comprises at least one opening for receiving a fastener.

Regarding claim 71, further comprises at least one edge 60 projecting from said rear face surrounding said at least one opening.

Regarding claim 72, wherein said catch is disposed on said rear face of said back wall.

Regarding claim 73, wherein said bottom wall comprises a mouth 84 for receiving a vertical fence member.

Regarding claim 74, further comprising first side wall and a second side wall extending from said back wall to form a substantial "U" shape with said bottom wall.

Regarding claim 75, wherein said first side wall 76 and said second side wall 76 each comprise a groove 84 for receiving a ridge to attach a cap to said bracket.

Regarding claim 76, wherein said back wall comprises a recessed area (curved areainside) surrounding said catch to form a space for receiving said retention clip.

Regarding claim 77, wherein said at least one opening is substantially oval shaped.

***Allowable Subject Matter***


3. Claim 78 is allowed.
4. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record neither teaches nor suggests all of the claimed subject matter of claim including the catch comprising teeth for meshing with teeth disposed on the retention clip.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John R. Cottingham whose telephone number is (571) 272-7079. The examiner can normally be reached on Monday - Thursday, alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne Browne can be reached on (571)272-3670. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



John R. Cottingham  
Primary Examiner  
Art Unit 2116

jrc